

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

D-2 FRANK RICHARDSON

Defendant.

CRIMINAL NO.: 11-CR-20444

HON. GERALD E. ROSEN

**MOTION TO ADJOURN TRIAL DATE
AND REQUEST FOR FINDING OF EXCLUDABLE DELAY**

Now comes the United States of America, by Barbara L. McQuade, United States Attorney and John N. O'Brien and Jeanine M. Brunson, Assistant United States Attorneys and hereby makes the following request for adjournment of the trial date in the above captioned matter and for the Court to find that the delay occasioned by this request be excluded from calculation under 18 U.S.C. § 3161(c)(1) and (h)(8)(A), also known as the Speedy Trial Act. In support of their motion, the undersigned state as follows:

1. In May 2010 Defendant Frank Richardson was charged in a multi-count indictment in Case Number 10-20397 for armed robbery and related firearms offenses alleged to have occurred between February and May 2010.

2. Defendant Richardson was subsequently charged on July 12, 2011 in this case with violating 18 U.S.C. Section 1951, Armed Robbery and 18 U.S.C. Section 924(c), Possession of Firearm/Crime of Violence with co-defendant Curtis Williams, who is unrelated to case 10-20397.

3. On April 6, 2012 Attorney David Cripps was appointed to represent defendant Richardson in this case. Richardson had previously been represented by Attorney John McManus who had withdrawn as Mr. Richardson's attorney on July 8, 2011 in case 10-20397.

4. On August 14, 2012 an Order Granting Motion to Withdraw as Attorney by Mr. Cripps was issued in case number 10-20397. An Order Granting Motion to Withdraw as Attorney by Mr. Cripps was issued in this case on October 23, 2012.

5. At a motion hearing on October 22, 2012 Defendant Richardson, represented by Mr. Craig Daly, waived his speedy trial rights in open court in connection with case number 10 - 20397. The foundation of the adjournment of the trial in case number 10-20397 included Mr. Daly's recent appointment to the case, the volume of discovery and the need to properly prepare for trial. A trial date in that matter has been scheduled for March 19, 2013. Mr. Richardson, however, stated that he did not wish to waive his speedy trial rights in connection with this case.

6. On November 7, 2012 Attorney Craig A. Daly was formally appointed to represent Mr. Richardson in both this case and case number 10-20397.

7. Trial in this matter had been scheduled for November 13, 2012 but did not proceed on that date. The time in which the trial is to commence in this case under the Speedy Trial Act is set to expire on November 29, 2012.

8. Although a proposed stipulation for adjournment of trial was forwarded to defense counsel, counsel for defendant advised by e-mail that he will not have an opportunity to speak with Mr. Richardson regarding same until next week.

9. The combined case materials and discovery materials for the two cases provided to or that require review by Attorney Daly include motions and orders issued by this court, proceeding transcripts, physical evidence, surveillance video, telephone records, over 1000 pages of law enforcement reports and related documents, and interview reports of cooperating co-defendants.

10. Defendant's current attorney has been associated with the case for less than one month, has been appointed to represent defendant Richardson in case number 10-20397 pending before this court and has not yet had the opportunity to communicate with the government regarding the underlying charges, discovery, potential motions or any trial issues.

11. In the event that the trial of case number 10-20397 results in a conviction as charged, Defendant Richardson would face a mandatory 82 years in prison with a possible additional 121 - 151 months advisory guideline range. A conviction in that case may obviate the need for trial in this case. If defendant Richardson is acquitted in 10-20397, his sentencing exposure in this case (11-20444) is reduced from a mandatory minimum of 25 years to a mandatory minimum of 7 years.

12. The delay in this case, occasioned by the resolution of the trial in case number 10-20397, is properly excludable under 18 U.S.C. Section 3161(h)(1)(B) and (h)(7). The delay occasioned by this motion also tolls the Speedy Trial clock. 18 U.S.C. Section 3161(h)(1)(D); *United States v. Tinklenberg*, 131 S.Ct. 2007 (2011).

13. The undersigned contend and request that the court find that the ends of justice are properly served by the adjournment requested herein as the action outweighs the best

interest of the public and the defendant to s speedy trial because:

a. The failure to grant the continuance would be likely to make continuing the proceedings impossible due to the very recent appointment of defendant's third attorney.

b. The failure to grant the continuance would likely result in insufficient time to properly and effectively prepare for trial by both parties taking into account the exercise of due diligence.

c. The need to conclude the more complicated and older case (10-20397).

Accordingly, the undersigned respectfully request that this honorable court adjourn the trial date in the above captioned matter from the originally scheduled date of November 13, 2012 to date subsequent to the trial date scheduled in case number 10-20397 and find that the time between those dates to be properly excluded from calculation under the Speedy Trial Act, 18 U.S.C. Section 3161 et. seq for the reasons stated herein and due to this pending motion.

Respectfully submitted,

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P55429

Dated: November 28, 2012

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Craig Daly, Esq.

s/John N. O'Brien II

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P55429